In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 230

LEO VITELLO, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the Southern District of California, petitioner was convicted on one count (which charged three false statements) of perjury before a federal grand jury, in violation of 18 U.S.C. 1621. He was sentenced to imprisonment for one year and one day, subject to the parole eligibility provisions of 18 U.S.C. 4208(a)(2). The court of appeals affirmed (Pet. App. 1–14), one judge dissenting (Pet. App. 14–16) as to the issues raised in the petition.

Petitioner contends that as to one of the specifica-

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tions[1] (whether he had ever placed a bet with Ruth Hughes), the question asked was too ambiguous to support the verdict since it was susceptible to being interpreted in such a way (*i.e.*, whether he had ever dealt directly with Ruth Hughes in placing a bet) as to permit petitioner's negative response to be received as the literal truth. Moreover, he asserts that the trial judge's instructions were deficient in that they allegedly failed to specify that the jury, in order to convict, had to agree unanimously on the falseness of at least one of petitioner's three responses to the specifications in the indictment. These contentions are examined at length and answered in the thorough opinion of the majority below, on which we rely here.[2]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

JULY 1970

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[1] Since the three specifications were charged in a single count, the court of appeals held as a threshold matter that if submission of any specification was error, the conviction must be reversed. See *Yates* v. *United States*, 354 U.S. 298, 311–312; Pet. App. 4–5.

[2] Petitioner quotes (Pet. 6) the brief of the government below out of context in urging that the government recognized the ambiguity of the term, "give a bet." The government was there referring to a post-trial affidavit of a witness and not to the questions put to petitioner before the grand jury. (We are filing a copy of this brief with the Clerk of this Court.) As the majority opinion below fully shows, there was no ambiguity in those questions, petitioner's understanding of them, or what he intended to convey by his responses (Pet. App. 6–8). The government made this clear in its supplemental brief in the court of appeals at pp. 34–35 (which we are also filing herewith).

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